

1 THE HONORABLE RONALD B. LEIGHTON

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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 SU SHIN,

CASE No. C08-05626-RBL

12 Plaintiff,

13 v.

14 ESURANCE INSURANCE COMPANY, a
15 Wisconsin corporation; ESURANCE
16 PROPERTY AND CASUALTY
17 INSURANCE COMPANY, a California
18 corporation, ESURANCE INC., a
19 Delaware corporation; and ESURANCE
20 INSURANCE SERVICES, INC., a
21 Delaware corporation,

22 Defendants.

23 **~~PROPOSED~~ FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT AND**
24 **DISMISSING CLAIMS OF CLASS MEMBERS WITH PREJUDICE**

25 This matter came before the Court for hearing on January 15, 2009. The Court having
26 considered the Settlement Agreement, comments received regarding the settlement, the record
in the above captioned action (the "Action"), the evidence presented and the arguments and
authorities presented by counsel, and for good cause appearing,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court, for purposes of this Final Approval Order and Judgment Approving
Settlement and Dismissing Claims of Class Members with Prejudice ("Final Approval Order

[PROPOSED] FINAL JUDGMENT AND ORDER
APPROVING SETTLEMENT AND DISMISSING
CLAIMS OF CLASS MEMBERS WITH
PREJUDICE C08-05626-RBL - 1

DLA Piper LLP (US)
701 Fifth Avenue, Suite 7000
Seattle, WA 98104-7044 • Tel: 206.839.4800

1 and Judgment") adopts the capitalized terms and their definitions set forth in the Settlement
2 Agreement. The Court has jurisdiction over the subject matter of the Action, the Named
3 Plaintiff, the Class Members and Esurance.

4 2. The Court finds that the notice to the Class of the pendency of the Action and
5 of this Settlement, via mailed notice as provided by the Settlement Agreement and by this
6 Court's Preliminary Approval Order, dated October 2, 2009, constituted the best notice
7 practicable under the circumstances to all Persons within the definition of the Settlement Class,
8 and fully complied with the requirements of due process and of all applicable statutes and laws.

9 3. The Court finds that the terms contained within the Settlement Agreement are
10 in all respects fair, reasonable, adequate, just, and in compliance with all applicable
11 requirements of Federal Rule of Civil Procedure 23, Washington law and the Washington and
12 United States Constitutions (including the Due Process Clause), and all other applicable laws,
13 and are in the best interests of the parties and the Class. Accordingly, the Court directs the
14 parties and their counsel to implement and consummate the settlement in accordance with the
15 terms and conditions of the Settlement Agreement.

16 4. The Court finds that Esurance has served notifications on the appropriate
17 federal and state officials, in compliance with 28 U.S.C. § 1715.

18 5. Pursuant to Rule 23, the Settlement Class as finally certified shall consist of:
19 each Person who, during the period from October 15, 2002, to the date of the Court's
20 Preliminary Approval Order, meets the following criteria:

21 (a) was insured under a personal lines automobile insurance policy
22 providing uninsured motorist property damage coverage or underinsured
23 motorist property damage coverage issued by Esurance;

24 (b) was involved in an accident with an underinsured, uninsured, or hit
25 and run motorist and reported this type of claim between October 15,
26 2002 and the date of the Preliminary Approval Order;

(c) for whom the sum of claim payments made by Esurance under any
property damage coverage for vehicle repairs exceeded \$1000;

- 1 (d) whose vehicle was less than 6 years old at the time of loss;
2
3 (e) whose vehicle had less than 90,000 miles at the time of loss; and
4
5 (f) whose vehicle suffered structural (frame) damage and/or required
6 body work.
7 (g) Notwithstanding the criteria set forth in sub-sections (a)-(f) above,
8 the following are excluded from the Settlement Class:

9 (i) claims resulting in total losses;

10 (ii) claims for damage to leased, non-owned or temporary
11 substitute vehicles;

12 (iii) claims limited to (1) glass repair or replacement, (2) tire
13 replacement, or (3) sound systems repair or replacement, or (4)
14 any combination of (1), (2) and (3) only;

15 (iv) claims identified as closed without payment by Esurance;

16 (v) claims in which the policyholder was paid for diminished
17 value in addition to the cost of repair;

18 (vi) claims involving vehicles that, prior to the accident at issue,
19 had been involved in any other accident;

20 (vii) claims arising under a personal lines automobile insurance
21 policy issued by Esurance in the State of Georgia;

22 (viii) the Esurance Entities, all present or former officers and/or
23 directors of the Esurance Entities, Class Counsel, the Judge of
24 this Court, the Judge's family and staff, Esurance's counsel of
25 record, and all Persons who make a timely and valid election to
26 be excluded from the Settlement Class in accordance with the
provisions of the Individual Notice.

6. For settlement purposes only, the Settlement Class as certified satisfies all the requirements contained in Rule 23, the Washington and United States Constitutions, and any other applicable law.

1 7. In certifying, for settlement purposes only, this Action as a class action, the
2 Court hereby finds that:

3 (a) there are approximately 2800 Class Members, and that the numerosity
4 criterion of Rule 23(a)(1) is satisfied;

5 (b) there are questions of law and fact common to the members of the
6 Settlement Class, including:

7 (i) whether the Class Representative and Class Members had any
8 obligations other than presenting their claim for property damage to Esurance and making their
9 vehicles available for inspection in order to receive compensation for diminished value;

10 (ii) whether Esurance fulfilled its contractual and claims handling
11 obligations to its policyholders;

12 (iii) whether Esurance breached its contracts with Class Members;
13 and

14 (iv) whether the Class Representative and Class Members have
15 sustained damages, and, if so, the proper measure of those damages.

16 The Court finds that those common issues of law and fact satisfy the Rule
17 23(a)(2) commonality requirement;

18 (c) the claims and defenses of the Class Representative are typical of the
19 claims or defenses of the other Class Members, in that the Class Members and the Class
20 Representative all had uninsured motorist property damage coverage or underinsured motorist
21 property damage coverage issued by Esurance, were all involved in accidents with
22 underinsured, uninsured, or hit and run motorists, were all compensated by Esurance for the
23 repairs to their vehicles, and were all not compensated by Esurance for loss due to supposed
24 diminished value, and the typicality requirement of Rule 23(a)(3) is therefore satisfied;

25 (d) the questions of law and fact common to members of the Settlement
26 Class concerning whether Esurance was obligated to disclose, adjust, and pay for diminished

1 value predominate over any questions affecting only individual members of the Settlement
2 Class, and the predominance requirement of Rule 23(b)(3) is satisfied;

3 (e) the Class Members' individual claims are small, the Class Members do
4 not have an incentive to litigate the claims on an individual basis given the complexity of the
5 issues involved, and as required by Rule 23(b)(3), a class action was and is superior to other
6 available methods for the fair and efficient adjudication of this dispute, considering, *inter alia*:
7 (i) the interests of members of the Settlement Class in individually controlling the prosecution
8 or defense of separate actions; (ii) the extent and nature of any litigation concerning the
9 controversy already commenced by or against members of the Settlement Class; (iii) the
10 desirability or undesirability of prosecuting the litigation of these claims in this particular
11 forum; and (iv) the difficulties likely to be encountered in the management of the class action;
12 and

13 (f) the Class Representative has no interests adverse to the interests of other
14 Class Members, Class Counsel is experienced and competent, and the Class Representative and
15 Class Counsel have and will fairly and adequately protect the interests of the Class Members,
16 and the adequacy requirement of Rule 23(a)(4) is satisfied.

17 RELIEF TO THE CLASS

18 8. Esurance shall provide relief to the Settlement Class in the form and in the
19 manner specified in the Settlement Agreement.

20 APPLICABILITY

21 9. The provisions of this Final Approval Order and Judgment are applicable to
22 and binding upon and inure to the benefit of each party to the Action (including each Class
23 Member).

24 10. To the extent permitted by law and without affecting the other provisions of
25 this Final Approval Order and Judgment, this Final Approval Order and Judgment is intended
26 by the parties and the Court to be res judicata and to prohibit, enjoin and preclude any prior,

1 concurrent or subsequent litigation brought individually, or in the name of, and/or otherwise on
2 behalf of the Named Plaintiff or any Class Member, with respect to any and all claims, rights,
3 demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, costs,
4 expenses or losses arising out of or relating to the Released Claims, as defined in the Settlement
5 Agreement.

6 11. All persons who are included within the definition of the Settlement Class and
7 who did not properly file requests for exclusion are therefore bound by this Final Approval
8 Order and Judgment and by the Settlement Agreement and are conclusively deemed to have
9 fully, finally and forever settled and released all Released Claims, as defined in the Settlement
10 Agreement, against the Released Persons.

11 **ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES**

12 12. Esurance shall, within ten (10) business days after the Effective Date, subject
13 to receipt by Esurance of a Form W-9 completed and signed by the payee, deliver to Class
14 Counsel, at the address set forth below, a check payable to Reich and Binstock, LLP Trust
15 Account, delivered to Debra Brewer Hayes, Reich and Binstock, LLP, 4265 San Felipe, Ste.
16 1000, Houston, Texas 77027, unless other delivery instructions are provided to Esurance's
17 counsel in writing by Debra Brewer Hayes, in the amount of \$ 198,120.00, as attorneys' fees and
18 costs.

19 **GENERAL PROVISIONS**

20 13. The Effective Date of the Settlement shall be thirty (30) days after the date of
21 this Final Approval Order and Judgment or the date determined pursuant to paragraph 63 of the
22 Settlement Agreement, whichever is later.

23 14. The provisions of this Final Approval Order and Judgment are entered as a
24 result of an agreement and stipulation of the Parties. The Parties' Settlement Agreement and
25 this Final Approval Order and Judgment are not intended to be, and shall not be construed as,
26 any admission, express or implied, of any fault, liability or wrongdoing by Esurance.

1 15. With respect to Persons who have requested exclusion from the Settlement
2 Class, or any other Person seeking to litigate with Esurance over any of the Released Claims or
3 to represent any form of opt-out class from this Settlement, Class Counsel has stipulated, and
4 the Court agrees, that any representation, encouragement, solicitation or other assistance,
5 including but not limited to, referral to other counsel, of or to any Person having requested
6 exclusion from the Settlement Class or any other Person seeking to litigate with Esurance over
7 any of the Released Claims or to represent any form of opt-out class from this Settlement,
8 could place Class Counsel in an untenable conflict of interest with the Settlement Class.
9 Accordingly, Class Counsel and their respective firms are henceforth prohibited (only to the
10 extent that it is otherwise not violative of any applicable rules of professional conduct) from
11 representing, encouraging, soliciting or otherwise assisting, in any way whatsoever, including,
12 but not limited to referrals to other counsel, any Person in requesting exclusion from the
13 Settlement Class, except that suggesting to any such Person the option of obtaining separate
14 counsel, without specifically identifying options for such counsel, shall be permitted.
15 Additionally, Class Counsel and their respective firms are henceforth prohibited (only to the
16 extent that it is otherwise not violative of any applicable rules of professional conduct) from
17 representing, encouraging, soliciting or otherwise assisting, in any way whatsoever, any Person
18 who has requested exclusion from the Settlement Class, or who seeks to represent any form of
19 opt-out class from this Settlement, or any other Person, in any subsequent litigation that Person
20 may enter into with Esurance regarding the Released Claims or any related claims, except that
21 suggesting to any such Person the option of obtaining separate counsel, without specifically
22 identifying options for such counsel, shall be permitted.

23 16. As of the Effective Date, by operation of the entry of the Final Approval Order
24 and Judgment, each Class Member shall be deemed to have fully released, waived, relinquished
25 and discharged, to the fullest extent permitted by law, all Released Claims (including Unknown
26 Claims) that the Class Members may have against the Released Persons, all as provided for in


1 the Settlement Agreement PROVIDED, HOWEVER, that neither this Final Approval Order
2 nor the Settlement Agreement shall operate to release, waive, relinquish or discharge the bodily
3 injury claims of the Class Members or any other claims of the Class Members outside of the
4 scope of those claims released by virtue of the Settlement Agreement and this Order.

5 17. Jurisdiction is retained by this Court for the specific purpose of enabling any
6 party to this Final Approval Order and Judgment to apply to the Court at any time for such
7 further orders and directions as may be necessary and appropriate for the construction or
8 carrying out of this Final Approval Order and Judgment, for enforcement of compliance with
9 the terms of this Final Approval Order and Judgment, or to impose appropriate sanctions for
10 any violation of this Final Approval Order and Judgment.

11 18. All of the claims in this Action shall be and hereby are DISMISSED
12 with prejudice and without leave to amend.

13 **IT IS SO ORDERED.**

14 Dated this 28th day of January 2010.


The Honorable Ronald B. Leighton
United States District Judge

17 Presented by:
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19

20 _____
Debra B. Hayes
REICH & BINSTOCK
21 4265 San Felipe, Suite 1000
22 Houston, TX 77027

23 David A. Futscher
PARRY DEERING FUTSCHER & SPARKS
24 P.O. Box 2618
25 Covington, KY 41012-2618

26 Van Bunch
Elaine A. Ryan
Patricia N. Syverson

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DLA Piper LLP (US)
701 Fifth Avenue, Suite 7000
Seattle, WA 98104-7044 • Tel: 206.839.4800

1 BONNETT FAIRBOURN FRIEDMAN & BALINT
2 2901 N. Central Avenue, Suite 1000
3 Phoenix, AZ 85012

4 Stephen M. Hansen
5 LOWENBERG, LOPEZ & HANSEN, PS
6 950 Pacific Avenue, Suite 450
7 Tacoma, WA 98402

8

Stellman Keehnel
9 DLA Piper LLP (US)
10 701 Fifth Avenue, Suite 7000
11 Seattle, WA 98104
12
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16
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19
20
21
22
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